

Easton	Johnston	Pryor
Evans	Kassebaum	Quayle
Ford	Kasten	Randolph
Garn	Laxalt	Riegle
Glenn	Leahy	Roth
Goldwater	Levin	Rudman
Gorton	Long	Sarbanes
Grassley	Lugar	Sasser
Hart	Mathias	Simpson
Hatch	Matsumaga	Specter
Hatfield	Mettingly	Stafford
Hawkins	McClure	Stennis
Hayakawa	Melcher	Stevens
Healin	Mitchell	Symms
Helms	Moyahhan	Thurmond
Helms	Murkowski	Tsongas
Huddleston	Nickles	Warner
Humphrey	Nunn	Weicker
Inouye	Packwood	Williams
Jackson	Pell	Zorinsky
Jepsen	Percy	

**NAYS—3**

Dodd	Metzenbaum	Proxmire
------	------------	----------

**NOT VOTING—9**

Bradley	Hollings	Schmitt
Cohen	Kennedy	Tower
East	Presider	Wallop

So the nomination was confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. McCURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask that the President be immediately notified that the Senate has given its consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

**NOTICE OF INTENTION TO MOVE TO SUSPEND PARAGRAPH 7(a) (1) OF RULE XXVI—1980 PROTOCOL AMENDING THE INTERIM CONVENTION OF CONSERVATION OF NORTH PACIFIC FUR SEALS**

Mr. STEVENS. Mr. President, in accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 7(a) (1) of rule XXVI for the purpose of allowing the Senate to consider Ex. S, 96-2, 1980 Protocol Amending the Interim Convention of North Pacific Fur Seals.

**LEGISLATIVE SESSION**

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

**INTERNATIONAL RECORD CARRIER COMPETITION ACT OF 1981**

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Calendar Order No. 37, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 271) to repeat section 222 of the Communications Act of 1934.

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina (Mr. THURMOND) is recognized to offer a motion.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I send to the desk a motion and ask that it be stated.

The PRESIDING OFFICER. The motion will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND) moves that S. 271, Calendar Order No. 37, be referred to the Committee on the Judiciary for a period not to exceed 7 calendar days, and that thereafter the committee be deemed discharged from further consideration thereof and the bill returned to the calendar.

Mr. THURMOND. Mr. President, as I understand, we have 45 minutes to debate, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Maryland (Mr. MATHIAS).

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I thank the distinguished chairman of the Judiciary Committee.

Mr. President, I rise in strong support of this motion. It seems to me that this bill should be referred to the Judiciary Committee to examine its possible impact on antitrust questions. We all know that the bill repeals a major exemption to the antitrust law and this repeal will have a tremendous impact on competition in international telegraphic communications. What effect it will have beyond that, I do not know.

That, of course, is the purpose for which the distinguished chairman of the Committee on the Judiciary has made the motion, so we can determine. We do not know now what the impact will be. But we need to find out.

We need to recognize the fact that there has been a revolution in the whole field of communications, a revolution of extraordinary proportions. We have seen, within the last decade, the rapid employment of communications satellites, for example, which are affecting this field.

I do not know how this particular legislation will impact on other areas of this widespread communications network, which is rapidly proliferating all over this globe. Since we do not know, I think we ought to find out. And the time to find out is now, by a brief—very brief—examination by the Committee on the Judiciary, which is traditionally charged with the oversight of antitrust issues.

Since the Committee on the Judiciary is charged with oversight of the antitrust laws, which is the basic tenet of the free enterprise system—that is what we are talking about, free enterprise; we are talking about maintaining the competition of the marketplace—then it strikes me that the Senator from

South Carolina, the chairman of the Committee on the Judiciary, has been eminently reasonable in suggesting that the committee, with the special body of expertise in antitrust, should be allowed to comment formally on the bill.

Mr. President, this is entirely customary in the Senate. I do not believe that I can recall, in my limited experience here, a situation when a committee has expressed an interest of this sort, has agreed on a very brief examination, has agreed to report the bill back without amendment, and, as a mere matter of comity between committees, such an arrangement has not been agreed to.

Mr. President, I listen with great respect to the Committee on Commerce and to the reports that it issues on highly technical subjects such as the Communications Act. I would be strongly influenced in any final decision I make about the views of the Commerce Committee in that kind of area. By the same token, I suggest that the views of the Committee on the Judiciary on the antitrust aspects of the bill are equally worth consideration by Members of the Senate who may serve on neither committee. I should think that it would be a service to the entire Senate to have the views of the Committee on the Judiciary on the antitrust aspects of the bill.

Mr. President, I, myself, strongly support the chairman of the Committee on the Judiciary, and I urge other Senators, in the interest of the whole Senate—not one committee or the other, but in the interest of the whole Senate—to allow the Committee on the Judiciary the brief period of time that has been requested to review the antitrust aspects of the bill.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I thank the able Senator from Maryland for his remarks on this subject. He is the ranking majority member of the Committee on the Judiciary, and I think he has made a very fine point in his remarks.

I yield now to the able Senator from Nevada (Mr. LAXALT).

Mr. LAXALT. I thank my chairman.

Mr. President, the telecommunications industry plays a significant role in the U.S. economy, and has a pervasive influence on the lives of every citizen in the United States. As we enter the information age, telecommunications can be expected to play an even larger and more important role. For this reason, it is extremely important that Government address questions of monopoly concentration in this vital industry.

The Government has in the past conveyed monopoly power on a limited number of carriers in the telecommunications industry. As we move toward the desirable goal of deregulation in this industry, Government must accept responsibility for making certain that competition will replace regulation in an orderly and responsible fashion to assure its viability and vitality.

The situation of Western Union is a case in point. Pursuant to section 222 of the Communications Act of 1934, enacted in 1943, Western Union was

granted a statutory antitrust exemption to permit its merger with the Postal Telegraph and Cable Corp. As a result of this merger, Western Union obtained a monopoly position in domestic telegraph and telex service. However, section 222 expressly prohibited Western Union from entering into the international telegraph and telex business. This prohibition was considered necessary to prevent Western Union from routing its domestic telegraph and telex traffic to its own international operations, and thereby improperly extending its Government protected domestic monopoly power to the international market as well.

The Committee on Commerce, Science, and Transportation recently reported S. 271, which would repeal section 22, thus permitting Western Union to freely enter the international record communications market. S. 271, however, fails to provide any precompetitive safeguards to protect against a lessening of international competition by virtue of Western Union's entry into that market.

On January 16, 1981, the FCC declared that Western Union still dominates virtually 100 percent of the domestic Telex/TWX market:

The public switched record submarket consists almost entirely of Western Union's Telex/TWX service. Since AT&T discontinued TWX service in 1971 and sold some of the associated facilities to Western Union, Western Union has maintained virtually a 100 percent share of this market. Recent entry by Graphnet into the market has had no noticeable effect on Western Union's performance." FCC Further Notice of Proposed Rulemaking, CC Docket No. 79-252, FCC 80-742, paragraph 195, January 16, 1981.

Again on February 19, 1981, the FCC reaffirmed Western Union's continuing market "dominance":

While the Commission has authorized other carriers to provide domestic competition for Western Union, as well as expansion of IRC gateways to 21 additional cities, thereby further diminishing Western Union's domestic market power, it is apparent from the agreements involved in this case that Western Union presently retains some portion of the dominance which originally concerned Congress in 1943. FCC Memorandum Opinion and Order, February 19, 1981, p. 6, fn. 12.

In light of Western Union's continued and well-recognized dominance of the domestic telecommunications industry, its imminent entry into the international market, which would be permitted by the repeal of section 222 by S. 271, clearly raises significant antitrust concerns. Recognizing this fact, the distinguished chairman of the Judiciary Committee, (Mr. THURMOND) wrote to the chairman of the Commerce Committee and requested a limited sequential referral of S. 271 in order to examine these implications. He did so pursuant to the Rules of the Senate, which provide that the Judiciary Committee has jurisdiction over measures involving the "protection of trade and commerce against unlawful restraints and monopolies."

Unfortunately, the chairman of the Commerce Committee chose not to concur in Senator THURMOND's request. He declined to do so despite the fact that,

in a "Dear Colleague" letter dated May 5 of this year, he himself recognized that there are, in fact, substantial antitrust implications involved in the legislation.

I was disappointed in the reaction of the Commerce Committee to what I regard as a very reasonable proposal on the part of Senator THURMOND.

Mr. PACKWOOD. Will the Senator yield?

Mr. LAXALT. Yes.

Mr. PACKWOOD. What did the Senator quote from that he said we said in our letter?

Mr. LAXALT. This is a "Dear Colleague" letter dated May 5 of this year and the statement is to the effect that the chairman recognized certain substantial antitrust implications are involved in the legislation.

Mr. PACKWOOD. Would the Senator read that letter and tell us where we said that?

Mr. LAXALT. I do not have the letter before me, Mr. President, but I am certain the chairman will provide.

Mr. PACKWOOD. Mr. President, I would very much appreciate it if the chairman would provide that because we never said that.

Mr. LAXALT. Surely, the chairman will respond to that, Mr. President, in his remarks.

Mr. PACKWOOD. All right.

Mr. LAXALT. In the first place, as noted in the dear colleague letter circulated to all Senators today, the Judiciary Committee in no way contends that S. 271 should not originally have been referred to the Commerce Committee or challenges the primary jurisdiction of that committee. The brief sequential referral now being sought is in no way intended to impact on that jurisdiction. It is merely sought to enable the Judiciary Committee to carry out its obligations under the Senate Rules.

As also pointed out in the dear colleague letter, over the years, the Judiciary Committee has frequently agreed to share jurisdiction with the Commerce Committee and other committees with substantial interest in a bill even though the legislation may have been primarily within the Judiciary Committee's jurisdiction. Of particular relevance today, the Judiciary and Commerce Committees have shared jurisdiction over communications matters in the past. One such example involved the consideration of the interconnection question and other issues affecting A.T. & T. in 1974-74.

Earlier in this session of Congress, the Committee on the Judiciary agreed to a joint referral of S. 682, a bill involving the antitrust jurisdiction of the FTC, even though the Senate Parliamentarian had determined that the Judiciary Committee had primary jurisdiction over that bill.

In this case the Judiciary Committee is not seeking a joint referral. All that is being sought is the opportunity of a brief referral of 15 days in order to examine those aspects of S. 271 that relate to the protection of trade and commerce against unlawful restraints and monopolies. Floor consideration would not be unduly delayed, and the

Senate would have the benefit of the Judiciary Committee's expertise on these matters.

Mr. President, faced with the ever-increasing complexity of legislation, the Senate will only be able to function if we approach issues such as the one now before us in a spirit of reason and comity. If we do not, any Senate committee would be able to deprive another of jurisdiction over matters properly within the other's scope by the simple device of insuring that legislation dealt predominantly with a subject within the original committee's jurisdiction.

I believe Senator THURMOND's very limited request for a brief referral of S. 271 to be extremely reasonable. It was my hope that, in a spirit of comity, the Commerce Committee would comply with that request. Unfortunately, they have chosen not to do so.

I would therefore urge the Members of the Senate to now support the motion of the distinguished Senator from South Carolina for that limited referral.

Mr. President, in conclusion, I have had brought to my attention the "Dear Colleague" letter previously referred to dated May 5, 1981, written by the distinguished chairman of the committee and joined in by Senators CANNON, HOLLINGS, and GOLDWATER.

Mr. PACKWOOD. Is this the one where the Senator said we had substantial antitrust implications?

Mr. LAXALT. I stand corrected.

Mr. PACKWOOD. I thank the Senator.

Mr. LAXALT. In part—

Mr. PACKWOOD. No. That is enough. I thank the Senator.

Mr. LAXALT (continuing). The letter in question indicates—

Mr. PACKWOOD. No more.

Mr. LAXALT (continuing). Even though it has antitrust implications.

I thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I wish to thank the distinguished Senator from Nevada for his splendid statement he has made on this subject.

I now yield to the able Senator from Pennsylvania (Mr. SPECTER).

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Thank you, Mr. President.

Mr. President, I am pleased to lend my voice of support for the motion by the distinguished chairman of the Judiciary Committee.

Excellent arguments have already been expressed by Senator MATHIAS and Senator LAXALT, and I know there is a long list of Senators of the Judiciary Committee who are marshaled here this afternoon to present cogent reasons why the resolution should be adopted.

I have noted Senate rule XXV(1)(16) which provides that the Committee on the Judiciary has jurisdiction over "protection of trade and commerce against unlawful restraints and monopolies."

In my judgment, there is no doubt at all that the legislation in issue involving the telecommunications industry and Western Union does involve very

substantial issues which touch upon the antitrust matters.

I think it is obvious to say that the Judiciary Committee has developed extensive expertise on antitrust matters and there would be a real benefit to the Senate and to the Nation in having the experience and expertise of the Judiciary Committee apply to this legislation.

Certainly, two heads are better than one and two committees are better than one.

The request is a very moderate one in terms of tenure and I see nothing which would be of harm to the Commerce Committee in having it cede consideration of this measure to the Judiciary Committee for this very brief period of time.

I am aware of the concern that there could be some difficulty as a matter of precedent. But I think it is unusual for the chairman of the Judiciary Committee to make the request which has been tendered in this case and that in the spirit of compromise which I have noted to be so prevalent in the healthy discussion in this very august body, we would be well served by acceding to the request which the chairman of the Judiciary Committee has made.

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. SPECTER. I yield.

Mr. PACKWOOD. Would it be the suggestion of the Senator from Pennsylvania, then, that any bill that has antitrust implications of any kind for which the Judiciary Committee asks subsequent jurisdiction be allowed?

Mr. SPECTER. I would say that question, that if the matter were deemed sufficiently important by the Judiciary Committee and its chairman that such a request should be honored.

I have noted a plethora of things to do by the Judiciary Committee so I would not expect it to step out unless the request were well justified.

Mr. PACKWOOD. Mr. President, in the Fair International Trade Act, which prohibited the marketing of imported merchandise at less than its fair market value, this shall be held and considered to be an antitrust law of the United States. That bill was referred to the Finance Committee. If the Judiciary Committee wants it they can have it after the Finance Committee is done with it. Is that right?

Mr. SPECTER. If the chairman of the Judiciary Committee thought it important enough to make a sufficient request, right. If not, let it pass.

Mr. PACKWOOD. Under the bill in the Banking Committee that prohibits bank mergers or acquisitions of banks by bank holding companies if such transactions would result in a monopoly, furtherance of a conspiracy to monopolize or, substantially lessen competition in any relevant market—even though that goes to the Banking Committee, if the Senator from South Carolina wants it the Judiciary Committee shall have it afterwards?

Mr. SPECTER. Yes, as long as it reaches sufficient imports to command the attention of the chairman of the Judiciary Committee as a preliminary to this kind of an extensive debate and dis-

cussion in the Chamber, I would say that passes the threshold.

Mr. PACKWOOD. So long as we understand that is the position of the Judiciary Committee. Every single bill that goes to any other committee that has any antitrust relevance, primary, secondary, or tertiary at all, and the Senator from South Carolina asks that it be sent to his committee automatically as a matter of right that is going to happen.

Mr. THURMOND addressed the Chair.

Mr. PACKWOOD. Wait a minute.

Mr. THURMOND. Mr. President, whose time is he speaking on? Let him speak on his own time.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. THURMOND. Mr. President, if he wishes to speak on his own time, OK, but not on our time.

Mr. SPECTER. Mr. President, I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, if the Senator from Oregon wishes to speak now he may speak.

Mr. PACKWOOD. No. Go ahead.

The PRESIDING OFFICER (Mrs. Hawkins). Who yields time?

If neither side yields time, time shall run equally against both sides.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Madam President, I yield 1 minute to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, I share the concern of the chairman of the Commerce Committee the Senator from Oregon that referral of S. 271, the Communications Act, to the Judiciary Committee would abruptly and unjustifiably cut into the jurisdiction of every substantive committee in the Senate.

The issue goes beyond the antitrust implications in the communications area. A decision by this body to refer S. 271 to the Judiciary Committee would unravel our system of organizing committees by functional subject and would by the same logic allow judiciary to claim jurisdiction over the airlines industry, the trucking industry, international merchant shipping, agriculture, export policies, small business, banking, pipeline regulation—all areas with exemptions from the antitrust laws.

As chairman of the Merchant Marine Subcommittee, I am especially disturbed by the attempt of the Judiciary Committee to seek referral of any legislation having even remote antitrust implications.

Such an expansive view of the Judiciary Committee's jurisdiction might compromise the Commerce Committee's efforts to clarify section 15 of the Shipping Act, 1916.

Section 15 is the heart of that act. It permits cooperative agreements among carriers in our foreign waterborne commerce that would otherwise violate the antitrust laws if those agreements are first approved by the Federal Maritime Commission.

Over the last 66 years, the precedent

is clear: International shipping matters are handled exclusively by the Commerce Committee, regardless of whether the legislation has antitrust implications.

Congress in the Shipping Act of 1916 plainly rejected the applicability of traditional American antitrust principles to the foreign waterborne commerce of the Nation.

It was the House Merchant Marine and Fisheries Committee which studied the collusive activities of oceanborne carriers and recommended the 1916 antitrust exemption, and it was the Senate Commerce Committee which concurred in this body. That 1916 Congress was no stranger to antitrust concepts, having passed the Clayton Act only 2 years earlier.

In 1961, Congress reacted to the Supreme Court decision in *Isbrandtsen Co. v. United States*, 358 U.S. 481 (1958), and amended the 1916 act to reiterate the inapplicability of domestic U.S. antitrust principles to this field of international commerce.

Again, the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee drafted these amendments rather than the Judiciary Committees of the Congress.

Recent actions of the Senate Commerce Committee provide equally strong precedent for its exclusive jurisdiction over international shipping issues.

In 1978, Congress amended the Shipping Act with controlled carrier legislation; in 1979, it also enacted antirebating legislation. Neither of these bills was referred to Judiciary, although both the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee considered the antitrust objections of the Department of Justice, and rejected them.

Just last year, the Senate Commerce Committee reported out the Ocean Shipping Act of 1980. This bill provided broad antitrust exemptions for cooperative activities in international shipping, for example, conferences and shipping councils, that would otherwise violate the antitrust laws. This legislation, referred solely to the Commerce Committee, passed the Senate unanimously.

The expertise and understanding of the problems facing our merchant marine and the international shipping community lie not in the Judiciary Committee but in the Senate Commerce Committee. Failure to evaluate policy changes relating to U.S. shipping in their proper international, rather than domestic, setting could easily force U.S. ships into a position of competitive disadvantage.

Other nations permit their vessels to operate without antitrust-type restrictions and those nations resist U.S. efforts to enforce its antitrust laws extraterritorially. Antitrust restrictions handicap U.S. vessel operators, causing them to lose substantial U.S. import and export cargoes to foreign ships, and have the potential for depriving U.S. shippers of efficient and responsive service.

The antitrust exemptions in the Shipping Act permit an alternative form of regulation by the Federal Maritime Commission. The Commerce Committee, in grappling with these issues over the years, has developed an understanding of

and sensitivity to the complexities of international transportation regulation.

If the reasoning of the Judiciary Committee prevails in this communications matter, it will, at a later time, be a simple matter to negate the 66 years of the Commerce Committee's expertise in maritime matters and to assume—contrary to the intent of the present law—that antitrust considerations should obscure consideration of the unique needs of our shipping community.

I therefore urge my colleagues to support the position of Senator Packwood and the Commerce Committee.

Mr. PACKWOOD. Madam President, I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Madam President, we are here today to take up S. 271, the International Record Carrier Competition Act of 1981, Senate Calendar No. 37, which I introduced in February of this year. S. 271 repeals section 222 of the Communications Act of 1934.

Section 222 was enacted in 1943, creating a statutory antitrust exemption which allowed the merger of Western Union Telegraph Co., and the Postal Telegraph & Cable Corp.

I think it is perfectly proper to explore the reason why this has suddenly been asked to be transferred to the Judiciary Committee. A former Attorney General of the United States came down here the day this bill was put on the calendar to attend a prayer breakfast. He represents either ITT or RCA or both, not small companies, but he is well recompensed for it, and that day an objection was called for, a hold order, by one of the members of the Judiciary Committee.

The question in my mind is, Would they have ever come up with this had not the former Attorney General interceded?

While section 222 allowed these two companies to merge and have a monopoly position in domestic telegraph and telex service, the merged entity, Western Union, was forbidden to enter into the international telegraph and telex business.

The logic behind the prohibition was that since the newly merged corporation—Western Union—had a monopoly, it would feed the domestic telegraph and telex traffic to its own international subsidiary, which would then have a monopoly on international telegram and telex traffic originating in the United States.

Section 222 is being repealed because the merged entity—Western Union—no longer has a monopoly on domestic traffic. In the domestic market, the demand for services—telegraph—traditionally offered by Western Union has declined substantially.

This is due to the wealth of substitute services offered by Satellite Business Systems, American Satellite Co., General Telephone, Telenet, and Graphnet.

The Judiciary Committee has requested referral of S. 271. The legislative history of the Senate consideration of section 222 of the Communications Act of 1934 makes it clear that this provision has always been a matter of Commerce

Committee jurisdiction, even though it has obvious antitrust implications.

Rule XVII of the Senate Rules provides the referral of a bill be made to the committee with jurisdiction over the subject matter which predominates in the proposed legislation. The predominant matter of S. 271 is economic regulation of the communications industry, and not simply antitrust immunity. That rule was followed when S. 271 was introduced in this Congress, and the Parliamentarian properly referred S. 271 to the Commerce Committee. There were no changes to S. 271 in committee, so the Parliamentarian's ruling should stand. The Judiciary Committee seeks referral of this bill because of what it maintains to be the underlying antitrust considerations. If the Judiciary Committee is successful, it will effectively undermine rule XVII.

I am pleased to have this question of jurisdiction put before the Senate for a vote. I believe the integrity of the committee structure would be seriously jeopardized by permitting referral of my bill, S. 271, to the Judiciary Committee, since it would set a precedent of encroachment by committees.

My 25 years of service in the Senate have taught me to avoid disputes such as these if at all possible, unless they involve significant issues. This is a truly significant matter, and I therefore urge my colleagues to support Senator Packwood and the Commerce Committee in this matter.

Madam President, if the chairman of the Judiciary Committee is right in his supposition that his committee should have this, I suggest that he can rewrite the 1934 Communications Act, and I question the ability of the Judiciary Committee to write technical matters such as communications. This is properly referred to the only committee in this body that has the expertise, the knowledge, and the background. We can go through case after case after case which will hold this to be true, which I am sure the chairman of the committee is going to do.

I do not think there is any necessity for this matter even being brought to the floor. Time after time after time the Commerce Committee has exercised its proper jurisdiction in the field, and I suggest, Madam President, if we are not allowed to do that, this committee might as well quit in this particular field.

I thank the chairman of the committee.

Mr. PACKWOOD. Madam President, I thank the Senator from Arizona.

The Senator from Arizona has well stated what the facts of the bill are. Forty years ago Western Union was failing and Postal Telegraph was failing, and we allowed the two of them to merge, and gave them an exemption from the antitrust laws and said in exchange for that they could not compete overseas.

In the last 40 years their percentage of the communications market by the merged company has gone down and down and down. They are no longer even a monopoly in the United States.

But during those 40 years RCA, Globecom, as they call their international subsidiary, and ITT Worldcom have been

competing overseas, along with a company that is a spinoff of Western Union called Western International, which was spun off totally when this bill was passed in the early forties.

Those three companies do not want to allow Western Union to compete with them overseas, even though their parent companies compete with Western Union here.

Let us be serious about this. This is not a small potatoes bill. You are not going to get a letter from people making less than \$100,000. This is a "big boys" bill, and some of the big boys are trying to keep other big boys from competing. That is the sum and substance of the merits of this bill.

Let us take a look at the history. It was introduced. The chairman of the Judiciary Committee had a right to ask that it be referred to the Judiciary Committee. He did not do that. All the time we had the bill in committee the chairman of the Judiciary Committee did not ask for referral to his committee, he did not come and testify, did not send a letter.

We did hear testimony from RCA and ITT, and Western Union International, and they are very opposed to the bill.

We reported the bill out and reported it out without any change, so that there was no argument that could be made that there was no reason for the Judiciary Committee to ask for a shared jurisdiction when the bill was put in, but there was when we put it out because the bill was changed. It had not changed.

What happened in between is that the lobbyists for ITT Worldcom went to one of the Senators on the Judiciary Committee and asked that Senator to put a hold on this bill, and I will tell you that that lobbyist and those companies do not give a darn as to jurisdictional dispute. Those companies simply want to kill the bill, and if they kill it in the Judiciary Committee, which has abolished its Antitrust Subcommittee, all the better, so far as that is concerned. They do not care about the merits of jurisdiction.

That bill came out, went on the Calendar, a hold was put on it by the chairman of the Judiciary Committee, and not until a week later did we even get a letter suggesting that he wanted a referral. Why? They wanted a referral solely so that they could start to establish the precedent of taking jurisdiction over any of these bills that have some possible antitrust implications.

The Senator from Pennsylvania said it very well, and for anybody who is on any other committee he had better well watch it.

I read the Fair International Trade Act which prohibits the marketing of imported merchandise at less than the fair market value at which such merchandise is sold in foreign markets. It provides that this "shall be held and considered to be an antitrust law of the United States," and is referred to the Committee on Finance.

But if the Judiciary Committee wants it, the Senator from Pennsylvania says they can have it.

I read the bill that prohibits bank

mergers or acquisitions of banks by bank holding companies if such transactions would result in a monopoly, the furtherance of a conspiracy to monopolize, or substantially lessen competition in any relevant market, and that was sent to the Banking Committee. No subsequent referral to the Judiciary Committee, but if they want it, the Senator from Pennsylvania says, they can have it.

I read the bill that was introduced that prohibits persons engaged in the production or refining of crude oil from acquiring any pipeline or transportation asset; translated it is divestiture of the oil companies, and that goes to the Committee on Energy and Natural Resources. You talk about an antitrust bill, and if the Judiciary Committee wants it they can have it, according to the Senator from Pennsylvania.

I can go right down the list of agricultural marketing acts that exempt the farmers from the antitrust laws that go to the Agricultural Committee, but if Judiciary wants it they can have it.

If that is what we want in this Senate, if every one of us on the Banking Committee, the Agriculture Committee, the Finance Committee, the Public Works Committee or any other committee wants to say that just because any one of the bills we have in our committee might be said to have some tertiary effect on the antitrust laws, an it'sy-bitsy, teeny-weeny effect, the Judiciary Committee can have it, then vote for what the Senator from South Carolina asks. But if you want to maintain the right of all of your committees to have a fair share of judging what should be the competitive aspects on the economy of this country, then I ask you not to vote for the motion to refer.

I will say this in closing: Most importantly, do not vote for the motion to refer at this time on this bill because this bill has very, very limited effects on the antitrust situation in the United States. All it does is allow Western Union to compete overseas, that is all it does.

I might say one last thing: The Judiciary Committee says it wants this bill for just 7 days. The Judiciary Committee at the direction of the Senator from South Carolina has introduced S. 1159. All of us in the Senate are familiar with this device. You take a bill and you rewrite so that it accomplishes the same thing, you slightly rewrite it, and phrase it in slightly different language, and it is referred to a different committee.

This bill was introduced on May 11. It does exactly the same thing in reverse that the bill before us now does, exactly the same thing. They simply changed it and phrased it in terms of a market share and it went to the Judiciary Committee. They have had it now for 3 weeks and a day and they have done nothing with it. They say, "Give us this bill for 7 days so we can look at it." They have a bill to look at. They are not interested in having a hearing on that bill, but they are interested in killing this bill. They are interested in killing this bill and, at the same time, to establish their right to have the jurisdiction over the areas of most of the other committees in this Senate.

If that is the precedent you want to establish, go right ahead, but it does not bode well for any other committee in the Senate.

**THE PRESIDING OFFICER.** Who yields time?

**MR. PACKWOOD.** Madam President, I yield such time as the Senator from Nevada desires.

**THE PRESIDING OFFICER.** The Senator from Nevada.

**MR. CANNON.** Madam President, I would like to discuss for a moment the wonders and beauty of nature. In some mysterious way and for reasons that still escape human understanding, the springtime triggers extraordinary and awesome events. Every spring the swallows return to Capistrano, the salmon return to fresh water to spawn, the sap rises in New England maple trees, and the Judiciary Committee tries to take jurisdiction from the Commerce Committee.

I must admit that I am having a severe case of *deja vu*. It seems that we did all this before. In fact we have, but as I recall the chairman of the Judiciary Committee then was somewhat taller and had a New England accent, and the chairman of the Commerce Committee was much more handsome and eloquent.

Quite seriously, Madam President, this is a very important debate. In many ways it will determine how efficiently this body will function for the next 2 years. In the 95th Congress, the Senate underwent a rigorous analysis of its rules and organization in an attempt to streamline the legislative process and begin to operate on a functional basis. In particular, an attempt was made to give each committee complete jurisdiction over the subject matter under its responsibility. In other words, instead of dealing with broad subjects such as energy, the environment, or communications on an *ad hoc* basis, with a piece here and a piece there, we could begin to deal with all the aspects of a delicate, multifaceted issue in committees of the Senate that had jurisdiction over the entire subject matter.

I am not standing here today to argue that the bill with which we are concerned has no bearing on antitrust issues. It has some—not a lot—but some. Rather the issue is whether a piece of legislation that is overwhelmingly concerned with the regulation of the telecommunications industry and basic communications policy—clearly the responsibility of Commerce—should be referred elsewhere just because another committee thinks it affects its jurisdiction in some regard.

Let me remind you that the Commerce Committee has jurisdiction over all bills related to "interstate commerce." If we used the same rationale that is being applied here today by the Judiciary Committee, we should have joint referral over every piece of legislation affecting interstate commerce.

Indeed, I would commend my committee chairman, the distinguished Senator from Oregon, for his remarkable restraint in not turning this debate into a

referral fight on S. 1159, which is where the debate properly should be. The bill to which I just referred is one that was introduced by various members of the Judiciary Committee to cover the exact subject matter in the Commerce Committee bill. It was referred to the Judiciary Committee because it was drafted in a way that amends the Clayton Act. Frankly, I think the referral of that bill to the Judiciary Committee was absolutely wrong based upon the precedent of our previous debate with the Judiciary Committee in the last Congress.

There we were dealing with precisely the same issue that is raised by S. 1159 today. The chairman of the Judiciary Committee had drafted a bill amending the Clayton Act, but which in effect changed the rules with respect to regulation of the trucking industry. The parliamentarian originally found that Judiciary should have exclusive jurisdiction because the antitrust laws were being amended. Then, after we announced our intention to fight the referral on the floor and after the noses were counted, the Judiciary Committee agreed to a referral that in effect gave most of the jurisdiction to Commerce, despite the fact that the law being amended was the Clayton Act.

Let me quote that referral agreement to you:

To the Committee on Commerce, Science, and Transportation with instructions that if and when reported, it will then be referred to the Committee on the Judiciary for a period not to exceed 30 days, solely for the purpose of review by the Judiciary Committee of those parts of the bill directly amending the Clayton Act and the bill shall be reported out of the Judiciary Committee without amendment.

In other words, on a bill which was precisely the equivalent of S. 1159, the only right that the Judiciary Committee won was to look at it for 30 days without being allowed to amend it or vote unfavorably on it.

I raise this point not to rub salt in the wound of that previous fight, but to point out that we have been through this before and the precedent not only points in favor of the Commerce Committee argument on S. 271, it makes me wonder why we are not fighting for our rightful jurisdiction on S. 1159.

I want to reiterate the point that we have made time and time again. The debate today is not on the merits of the legislation. It is simply upon the question of whether the Senate rules will be applied in a way that is both fair and expeditious. I strongly urge my colleagues to resist the efforts of the Judiciary Committee to stray into areas that have been set aside for the exclusive jurisdiction of other committees. There is a strong rationale for the existing Senate rules.

I may say that I was on the Rules Committee and had a part in that when we drafted the current rules and tried to streamline them and make some sense out of the mixed-up jurisdictional aspects that had been involved prior to that time. This is a vote that will serve as a precedent for future jurisdictional disputes. I urge my colleagues to vote with us on this issue.



Thank you, Madam President.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Madam President, I yield to the distinguished Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I find this discussion quite interesting. I have not been in this body terribly long, just over 2 years.

I am a member of the Judiciary Committee and I very strongly support the motion of the chairman of the committee to refer S. 271 for only 7 days.

My reasons for joining the chairman are twofold:

First, there are obvious antitrust implications in this bill. Everyone admits that. It is not in dispute.

Second, this body is a group of 100 individuals, 100 Senators. We have all heard the phrase that we must accommodate each other, we must get along with each other.

The great horror that we have heard about, that if this motion is agreed to, every committee's jurisdiction is vulnerable to the Judiciary Committee, is absurd. First of all, no one in his right mind would ask for that kind of jurisdiction.

The chairman of our committee, Senator THURMOND of South Carolina, is very experienced and astute, and he certainly is not going to ask that the Judiciary Committee have jurisdiction over the areas suggested by those opposed to this motion.

Madam President, I very simply suggest that we have some of this energy that we are exercising here over jurisdictional turf and pursue more important issues that face our country, like inflation, unemployment, energy, and so forth, and that we not spend all this time in a worry about how many marbles every committee has.

I suggest that we very simply talk about it for a while, that we stop talking about it very quickly, have a vote, and then, very graciously, and in a manner becoming to this body, refer the bill for only 7 days to the Judiciary Committee.

I personally have no intention of delaying this bill. I think S. 271 has a lot of merit. I think it is a good bill. But the point that another bill has been rewritten on the same subject and referred to the Judiciary Committee is irrelevant.

This motion provides for only 7 days in the Judiciary Committee, and when 7 days have transpired, the Senate can work its will on the bill. So the Judiciary Committee cannot hold it up more than 7 days, even if we wanted to.

Let us get on with it. Let us just refer it for 7 days. I know the chairman of the committee is not going to get involved in these other attempts to raid committees, which has been suggested thus far.

Madam President, to summarize, I rise in support of the motion by the distinguished chairman of the Judiciary Committee.

First, S. 271 may raise antitrust as well as commerce questions. These questions fall within the jurisdiction of both the

Commerce and the Judiciary Committees. The effort to give the Judiciary Committee a mere 7 days in which to examine the antitrust implications of the bill is fair and reasonable.

I have reviewed S. 271. The arguments favoring the bill are quite persuasive. Western Union was permitted to merge with Postal Telegraph when both concerns were experiencing financial difficulties. To insure that the new combine would not exercise undue market power, Congress required Western Union to divest itself of its international operations and deal with all international records carriers on a fair and nondiscriminatory basis.

If the market situation of Western Union has, in fact, changed so that no further antitrust and anticompetitive problems exist, then the repeal of these congressional strictures makes sense. All we are asking is that the Judiciary Committee be given the opportunity to review these aspects of the bill.

My second reason for supporting the resolution is equally important and goes far beyond the merits of this particular bill. The Senate is a body of accommodation. We try to give members a full opportunity to review legislation before it is moved through the body.

Of course, we do not take kindly to delays and unjustified harassment of legislation. But, we strive to accommodate all reasonable requests for fair deliberation.

Applying these principles to the particular bill at issue, it seems clear to me that the Judiciary Committee request should be accommodated. And it can be accommodated without any danger or prejudice to S. 271.

I have no axe to grind on the bill. I see no reason to delay it. I do not intend to impair it. I simply ask that the Judiciary Committee be given 7 days to review the bill and then we can proceed on it.

Madam President, I hope my colleagues can support a reasonable accommodation on this bill.

Mr. PACKWOOD. Will the Senator yield.

Mr. BAUCUS. Yes.

Mr. PACKWOOD. Is the Senator aware of a letter having been sent from the committee pertaining to the jurisdiction of other bills in addition to this bill?

Mr. BAUCUS. I must say I am not aware of that. I must say also that I will judge each question separately.

Mr. PACKWOOD. So the Senator thinks that the matter should be judged on the individual merits of each bill?

Mr. BAUCUS. I think on all of these questions it is a matter of who is asking. In this case, the chairman is asking for 7 days to consider the bill. It would depend on how much time it would take to discuss the issues. I think we should get along and work together.

Mr. THURMOND. Madam President, I yield to the Senator from Utah.

Mr. HATCH. Madam President, everybody involved in this matter is a very dear friend of mine. However, I believe that the issue here is not the bill itself. I do not think anybody questions that,

As a matter of fact, Judiciary does not in any way contest the primary jurisdiction of the Commerce Committee in regard to communication bills.

All the chairman of the Judiciary Committee is making is a reasonable request. I do not think it sets a deleterious precedent. He is asking for a sequential referral for 7 days in order to hold a hearing so that the Antitrust Committee, which is now the full committee of the Judiciary Committee, can ask some questions and receive answers on major questions that could arise under this bill.

This is a matter of comity. I think comity is the only way this body can work to resolve some of these matters and get them resolved in a manner satisfactory to all of us.

Traditionally, the Commerce and Judiciary Committees have sequentially dealt with matters they had an interest in such as S. 682, shared monopoly, and S. 1980, the FTC transfer of adjudication process. In 1973 and 1974 the Judiciary Committee held hearings on the interconnector issue of ATT in the communications industry.

Of course, a limited referral and automatic discharge after 7 days is, it seems to me, not too much to ask.

I do not think there is any danger whatsoever of the Judiciary Committee killing this legislation or causing any difficulties to it at all. It is simply a matter of courtesy and comity that the distinguished chairman of the Judiciary Committee has asked for.

I might raise the question, does the Commerce Committee have the expertise to handle complex antitrust issues, and especially issues involving monopolization?

I have no doubt in my mind that the Senators on the Commerce Committee are just as intelligent and just as effective as the Senators of the Judiciary Committee. In fact, I think we have non-lawyers on the Judiciary Committee and they have lawyers on the Commerce Committee.

On the other hand, there are some serious antitrust issues here that literally anybody who looks at them would want to give some consideration to, and especially the Judiciary Committee if it wants to do its job—such as Western Union has a domestic monopoly, which could result in the same problems which section 222 was designed to prevent; such as whether S. 271 contains enough safeguards to protect Western Union's domestic market position; I think such as, since the Commerce Committee hearings on S. 271 were in February of this year, they did not have the benefit of hearing the position of the newly appointed Assistant Attorney General for Antitrust.

I think it would be very instructive, Madam President, to obtain his views on the antitrust aspects of this bill to all of us here. And it would be a shame if this bill passes and there were some antitrust aspects that were not considered as a result of the lack of the Judiciary Committee review of this particular bill.

With regard to S. 1159, there is an im-

fact between the two committees on that. That addresses the antitrust concerns raised in S. 271 and clearly illustrates that there are antitrust issues involved. I think it makes more sense to hold a hearing on S. 271 directly, since it is a piece of legislation that raises the issues about which S. 1159 is concerned.

So, Madam President, it is not our intention to completely reexamine S. 271 or in any way to block that legislation. We merely want the opportunity for 1 day of hearings in an area which our committee has special expertise in, where we have antitrust experts on our staff. Certain Senators on the committee also qualify as antitrust experts.

I think this could be scheduled for next week, early June—June 10 is available, I understand—so it will not unreasonably delay this bill in any way. In that way, if the Judiciary Committee has any amendments to suggest, they will be able, through the hearing process, to come up with those amendments and bring them up on the floor at the time S. 271 is considered.

Madam President, I think these are reasons enough, and again, I reemphasize that I do not think anybody, especially the chairman of the Committee on the Judiciary, has any desire to take away the jurisdiction of the Committee on Commerce on this matter. I do think his request has been fair and courteous. I think it has been reasonable, and I do think that we could do some extra special work here that would assist the Committee on Commerce on a bill which could have some very serious antitrust ramifications, not only with regard to Western Union, but in many other ways as well.

I support the distinguished chairman of the Committee on the Judiciary in this matter, although I do respect and accept the positions of Senator Packwood, Senator GOLDWATER, and, of course, Senator CANNON and others who have a contrary point of view.

I do not think it hurts in these areas to have this kind of referral, especially since the committee is willing to do the work on it and add its expertise to that considerable expertise of the Committee on Commerce.

Madam President, I do support the distinguished chairman of the Committee on the Judiciary. I think we can do a service to the Committee on Commerce, to the Committee on the Judiciary, and to the whole Senate, as well as to the American people, even though this is not the most earthshaking thing, from anybody's point of view.

With that, Madam President, I hope that my colleagues will consider supporting the motion of the chairman of the Committee on the Judiciary.

Mr. GOLDWATER. Madam President, will the Senator yield me about 2 minutes?

Mr. PACKWOOD. I yield 2 minutes to the Senator from Arizona.

Mr. GOLDWATER. Madam President, we first must understand that section 222 is being repealed because the merged entity, Western Union, no longer has a monopoly on the domestic market. I heard the distinguished Senator from

Nevada, the distinguished Senator from Montana, the distinguished Senator from Utah and the distinguished Senator from Pennsylvania talk about monopoly. I should like any Senator in this Chamber to rise and tell me how many Western Union offices he can name in his State. There are just none left. These people have been almost put out of business in this field.

Madam President, who is opposing this bill? Well, RCA and ITT, and they have opposed it for the 4 years I can remember being on the committee, having hearings on this bill. The amazing thing is that the former Attorney General of this country was the one who raised the interest of one Senator to the point that he marked a hold on it. It is a strange coincidence—I would not make the charge without further investigation, but somebody in the Attorney General's office, along about that time, dismissed the suit against ITT.

Now, the same kind of operation is going on here. I think they are taking in a wonderful committee, the Committee on the Judiciary, trying to convince them that there is a monopoly. I can tell you from a lifetime spent in communications, Madam President, there is no monopoly. The only thing they want to see is some big money boys, RCA and ITT, grab hold. They do not have enough. They just run the whole dog-gone world. Now they want to take in Western Union and there is no Western Union left.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Madam President, I yield myself such time as I may require.

First, I would like to mention that it has been comity and courtesy for one committee to allow its bills to be seen by other committees and commented upon—and in many cases, to have joint referral. For instance, I have a letter here from the distinguished chairman of the Committee on Finance (Mr. DOLE), dated May 15. He said it has come to his attention that one of the four titles of S. 1068, introduced by a member of the Judiciary Committee, consists of certain matters in the jurisdiction of the Committee on Finance. I did not question that, Madam President. When the chairman of the Committee on Finance said that he felt his committee ought to see this, out of respect for that chairman and out of my high regard for any chairman in this Senate, I have agreed to refer it. And not just for 7 days; I have agreed to refer it for 45 days.

I have a letter here now to Senator BAKER, signed by Senator BREN and myself from the Judiciary Committee and Senator SIMPSON and Senator CRANSTON from Veterans' Affairs, requesting that S. 349, when reported to the Committee on Veterans' Affairs, be referred to the Committee on the Judiciary for not to exceed 45 days.

Madam President, we have all agreed in these other cases. This is the only time that I have had any question arise about a bill being referred. If we have any bill in the Committee on the Judiciary that the able chairman of the Committee on Commerce feels he wants to

see, we shall let him see it. In fact, he did want to see a bill we had, S. 682. When the able chairman of the Committee on Commerce asked to see it, we let him see it. We agreed to let the Committee on Commerce review S. 682.

I say to him now, if there is any other bill we have which he feels concerns communications or any matter within his jurisdiction—like S. 682 which I have right here—we shall be glad to refer it to the Commerce Committee.

All that I am asking is reciprocity. We are just asking that we be allowed to see a bill that came out of his committee.

Madam President, I want to say further that this action will not be abused. I have a list here of bills since 1957 on which the Senate Committee on Commerce and other committees have shared jurisdiction with the Senate Judiciary Committee on particular issues or legislative bills—for 25 years. That has been only an average of about a bill a year where there was a request for shared review. Unless we felt that this current bill had important antitrust implications, we would not ask for it to be sent to the committee.

In the factsheet that the distinguished chairman sent out to the Members of the Senate, he makes this statement, and I call the attention to my colleagues on this. It is on page 2 of that factsheet. It said that this legislation has obvious antitrust implications. If this bill has obvious antitrust implications, should it not go to the Judiciary Committee? The Standing Rules of the Senate, on page 24, item 16, provide that the Committee on the Judiciary is responsible for the "protection of trade and commerce against unlawful restraints and monopolies."

The Judiciary Committee thus has a responsibility to look out for the whole Senate in the matters of antitrust. That is our duty. It is our responsibility. On this matter, all that we ask is for the bill to be referred to the Judiciary Committee so we may review it and make comments on it for the benefit of the Senate. We do not intend to amend it. We did not even ask for a joint referral. We merely asked for the opportunity to look at it and make suggestions if any were worthwhile.

This is important. We have three expert antitrust lawyers on this committee. One is Pete Chumbris who was with Senator Dirksen and Senator Hruska for years and years and who has been with the Senate for 28 years. He is an expert on these matters.

He believes that this bill needs to be referred to our committee for comment.

Mr. Steve Cannon on the committee staff was with the Antitrust Division of the Justice Department for a number of years. His opinion is that this bill should be referred to the Judiciary committee.

We have Ms. Marcy Tiffany of our staff, who formerly practiced antitrust law as a member of an outstanding law firm in Washington, also believes that S. 721 should be referred to our committee for review and comment. This will benefit both the public and the Senate.

What is wrong with that? All we are trying to do is to protect the public and to protect the Senate. That is my only

interest. I am not interested in Western Union. I am not interested in ITT. I am not interested in furthering the interests of any corporation. I have not a single bit of stock in any corporation in the world. But if I had, it would not make any difference; I just want to protect the public.

Further, I note that we have a new Assistant Attorney General in the Justice Department for antitrust matters, Professor Baxter, and this gentleman is an expert on antitrust matters. At the time the Commerce Committee held its hearings on S. 271 he had not yet been confirmed. He has since been and confirmed and assumed his duties in that office. I would like for him to look at this bill. I wish to have him come up during our proposed one day hearing on this bill to testify. We will have the bill for only 1 week, if it is referred. But we would have a hearing in that time and we would ask Professor Baxter to come up and testify on this bill and to give us his opinion on its ramifications. That should be worth something, because it would help the Senate. It should help the country. What is wrong with that?

It is my duty as chairman of the Judiciary Committee to try to protect the public.

I just want to say that in my judgment it is important that every step possible be taken to protect the public interest on antitrust matters. It is amazing how many important matters there are concerning antitrust.

We held a hearing some time ago on an antitrust matter. That matter involved antitrust concerns raised by the impending sale of an important U.S. company to a Canadian concern. As part of that sale, the stockholders were to get a relatively small amount for their stock. As a result of our hearing, another entity agreed to buy that company and pay the stockholders a lot more money. Thus that hearing not only resolved the antitrust concerns connected with the originally proposed sale, but also resulted in benefiting the stockholders, the people. If that hearing had not been held, the stockholders and the public as a whole would not have benefited as they did.

That is all we are trying to do. We do not want to usurp the jurisdiction of the Commerce Committee. The chairman of that committee is an able man, a fine man. He has a good committee and he has good members on his committee. We just want the antitrust experts on our committee and the Assistant Attorney General to take a look at this bill and see what suggestions they might make for the benefit of both the public and the Senate.

I have a responsibility in this, because the Senate rule XXV puts that responsibility on me. I did not choose it; the rule imposes such a responsibility on the chairman of the Judiciary Committee. I am just trying to meet my responsibility when I say, as I do, to the Senate that the Committee on the Judiciary wants to take a look at this bill for 7 days in order to make comments. We think this effort would help the Senate to determine whether the bill should pass, and if it should pass, whether it should have

amendments. I would note, however, that we do not intend to amend it, but we do want the opportunity to make comments, recommendations, and especially to hear from the Assistant Attorney General on antitrust on this piece of legislation.

I reserve the remainder of my time.

Mr. PACKWOOD. Madam President, will the Senator yield for a question on my time?

Mr. THURMOND. I am pleased to yield.

Mr. PACKWOOD. He cited rule XXV (1)(16), the protection of trade and commerce against unlawful restraints of trade. What we have in the law at the moment is a lawful restraint of trade. We prohibit Western Union from competing overseas. All we are talking about is removing that restraint. How does that make this an unlawful restraint?

Mr. THURMOND. I am not saying it does make it unlawful. I am saying that this bill involves antitrust matters just as the Senator cited in his factsheet when he said, "Even though it has obvious antitrust implications." If this bill has obvious antitrust implications, then what is the objection to letting the Judiciary Committee take a look at it and make comments on it if they have any comments to make?

Mr. PACKWOOD. I am sorry. I was reading the rules. I thought the Judiciary Committee had jurisdiction on simply the trade and commerce against unlawful restraints and monopolies, not antitrust.

Mr. THURMOND. We will work with the Senator any way we can. We will let him have any bill that he asks for from my committee.

Mr. PACKWOOD. The Senator from South Carolina complained that he had not had a chance to hear from the Assistant Attorney General. The Senator has in his committee, of course, the bill he introduced, S. 1159, which is exactly the same as S. 271 in reverse. He had it for 3 weeks. Why has he not had a hearing and heard from the Attorney General on it?

Mr. THURMOND. We expect to hold hearings on that bill if this bill passes, but we were hoping that we could get this bill and comment on this bill and thereby prevent the necessity of action on that bill altogether.

Mr. PACKWOOD. The Senator is asking for this bill for 7 days and he had this one 3 weeks. Why did he not ask for jurisdiction of this bill when it was introduced when we considered it and reported it? Why only when it comes out of committee—and we are on my time now—only when it comes out of committee does he ask for the jurisdiction and it was not changed a whit from the time it went in until it went out? Let me ask further: The Senator asked also for jurisdiction over S. 898; is that correct?

Mr. THURMOND. That is correct.

Mr. PACKWOOD. He sent a letter saying when we finish it, if we finish it, we want it referred to the Judiciary Committee.

Mr. THURMOND. I made the request on S. 898 because, like S. 271, it appears to have obvious antitrust implications.

Mr. PACKWOOD. It is the Senator's

opinion that any letter he sends like that to any chairman phrasing it has antitrust implications.

Mr. THURMOND. There have been in the past and will be in the future very few such requests. As stated a few moments ago, only about one bill a year for 25 years was subject to a joint review request, there were very few bills that were asked for. In fact the members of the Judiciary Committee requested me to make this present request. The committee felt—

Mr. PACKWOOD. Wait a minute. The letter that he sent said—

Mr. THURMOND (continuing). Felt that we ought to ask that this bill be referred to us so we could comment on it.

Mr. PACKWOOD. The letter that he sent said one member asked.

Mr. THURMOND. What is that?

Mr. PACKWOOD. The letter the Senator sent to Senator BAKER and me said one member on your committee asked.

Mr. THURMOND. A number of members have requested this referral in a signed resolution that I have here. A number of Senators have requested this referral.

Mr. PACKWOOD. Madam President, I simply conclude with this, the Judiciary Committee has asked for this bill. They asked for S. 898 to be referred. The Senator from Pennsylvania has indicated that any bill that has any antitrust implications, no matter how minor, if the Judiciary Committee chooses to ask for it they shall get it. The Senator from South Carolina has indicated they do not request for it very often; if they do they have it as a matter of right. I simply say to other committees if that is the precedent they want to establish, they should vote for the Senator from South Carolina. If not, they should vote with me.

Mr. THURMOND. How much time remains, Madam President?

The PRESIDING OFFICER. The Senator from South Carolina has 4 minutes and 25 seconds.

Mr. THURMOND. How much time has the Senator from Oregon?

The PRESIDING OFFICER. Nineteen minutes and 22 seconds.

Who yields time?

Mr. PACKWOOD. How much time did I have left?

The PRESIDING OFFICER. Nineteen minutes and 22 seconds.

Mr. PACKWOOD. I am prepared to yield back my time if the Senator from South Carolina is prepared to yield back his.

Mr. THURMOND. Madam President, I will be glad to yield back in just a short time. I thought I might just make this closing statement: I think it is well for the operation of this great body to continue in its great historic tradition of comity and courtesy. I tell the Senator now that if there is any bill he would like to see that refers to any matter within the jurisdiction of his committee, we will be glad to refer to him. And similarly, we will respect a request for any other bill that another committee wants to see, just as Judiciary has honored the requests of Senator Dole and Senator Simpson and others.



I feel that it is in the best interest of this Senate to adopt a policy that when a chairman requests a bill that he does not do so lightly, that he do so for a good reason. But when he does, we should acquiesce to the chairman's request, especially when it will not delay the matter. Here the delay would be only for 1 week. We are asking for this time in order to get the opinion of the Assistant Attorney General, and to let our specialists in antitrust study this matter to see if they have any helpful suggestions. In a week, it will come back under any circumstances. It may come with recommendations and suggestions. It may not.

But what are we doing is trying to preserve the historic comity and courtesy of this body which has always existed between the committees, especially when the members of a committee request a chairman to ask that a certain bill be sent to the committee, as the members of the Judiciary Committee did in this particular instance.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. PACKWOOD. Madam President, as the Senator from South Carolina well knows, a bill does not have to be referred to committee to hold a hearing. It does not have to be referred to hold a hearing on that bill. The rules of this body permit any committee to hold any hearing that they want to hold.

This particular bill, S. 271, was introduced early this year. At any time that the Senator from South Carolina wanted to hold a hearing on that bill he could have. He has a similar bill in his committee that was introduced by him on which he could have held hearings.

I find it very coincidental that it was not until we had sent the bill out after hearings and 1 week after a hold had been put on the calendar that a request was made to refer this bill to the Judiciary Committee.

And it was only after RCA and ITT had lost in our committee unanimously, only after that, that an effort was made to refer it to the Judiciary Committee. I think it would be a bad precedent.

If the Senator is prepared to yield back his time, I am prepared to yield back mine.

Mr. THURMOND. Madam President, I just want to state for the record that I made the request weeks ago for this bill to be referred to our committee so we could have a quick hearing and comment on it.

I want to say again, I am not concerned about what those corporations want and do not want. Our job is to serve the public. Our job is to protect the interest of the people of this country. That is all I have tried to do in asking that this bill be referred to the Judiciary Committee. I hope that when the Members vote they will realize that a chairman, acting in his capacity, will be presumed, I imagine, to be acting in what he considers to be the best interest of the country.

There cannot be any delay. This is 1 week for a hearing, and then the bill can be considered and acted upon by the Senate.

Again, I would remind the distinguished Senator that when they asked for a bill from our committee, we agreed to refer it to his committee.

Mr. LONG. Would the Senator yield?

Mr. PACKWOOD. I yield to the Senator from Louisiana.

Mr. LONG. Madam President, I hope that the Senate is not going to set a precedent here that any time a committee wants a bill referred to that committee from the committee which clearly has jurisdiction, the committee with jurisdiction is under the burden of referring it.

Madam President, if we are to do that, we will never get anything done around this body. We could be here forever. The committee can just go on and on ad infinitum without ever reaching any conclusions.

As the chairman of the Commerce Committee has said, any committee—you do not have to have jurisdiction to hold a hearing. I mean, you could just hold hearings on anything on God's green earth anytime you want to. Every committee can do it.

May I say, as a former chairman of the Finance Committee, I can recall times when a single Senator just sets up a hearing, just calls people and gets a lot of people in and holds himself a hearing. He does not represent anybody, not even a committee. You can get away with that in the U.S. Senate. I have seen Senators do it with great success on occasion.

So that people can hold hearings and committees can hold hearings and subcommittees can hold hearings. They can do it if they do not have one whit of jurisdiction to do it.

But when a committee that is responsible and hears the issue and reports on it, controversial though it may be, to set a policy that another committee would like it referred to it because they feel an interest in the matter, that it ought to be referred and to feel that we owe it to one another by courtesy and comity, in my opinion, Madam President, that just flies into the rules of the Senate which says that the jurisdiction of this bill is in this committee. And these committees are reasonably well balanced.

With that in mind, I hope that we do not set a precedent here that when a committee feels it should have the bill referred to it because it would like to look at this matter, that everything must wait until it has hearings.

Mr. THURMOND. Will the Senator yield?

Mr. LONG. I yield to the Senator.

Mr. THURMOND. Madam President, I have here a letter from the chairman of the Finance Committee asking that a bill be referred to him. He said it had matters pertaining to the Finance Committee's jurisdiction. We were glad to agree to refer it to him.

I am sure no chairman of a committee today would ask for a bill unless he felt

there is merit in it, just as I am sure the able Senator would not have asked for a bill to be referred unless he felt there was some reason for it. And if there is some reason for it, it has been a custom to refer it.

I agree that you cannot refer every bill to every committee, or anything of that kind. But when you have a chairman, especially when he is acting at the request of the committee, who asks for a referral, it seems reasonable to agree to such a referral just as I referred this bill to the Finance Committee at the request of Senator Dole, the present chairman of the committee.

Mr. LONG. The point is, sometimes you do and sometimes you do not. It all depends upon the particular problem involved.

But I would think that were a committee cleared to have jurisdiction, it is within the discretion of the committee they do not think they ought to refer this. I hope, unless the Senate finds some good reason why it wants further advice on the subject, it would sustain the jurisdiction of the committee.

● Mr. INOUE. Madam President, I would hope the Senate will resist any attempt to refer S. 271 to the Judiciary Committee.

I believe the reasons set forth by the distinguished chairman of the Commerce Committee, its ranking minority member, and many of my other colleagues on the committee clearly explain why jurisdiction over this legislation, which deals with the Federal regulation of communications, should rest exclusively with the Commerce Committee.

Indeed, I believe argument to the contrary not only overlooks the Senate rules and a considerable body of its precedent, but is based on a history which has been made irrelevant by the technological breakthroughs in communications since World War II, and the decisions of the FCC recognizing these revolutionary changes in the state of the art. Western Union no longer has a monopoly on domestic record communications traffic, and this was the underlying reason for the enactment of section 222 in 1943.

In my view, the ramifications of acceding to the Judiciary Committee's request go far beyond accepting myth over reality. We would be setting a precedent for according that committee super status, and giving it authority to oversee most of the work of the other standing committees of the Senate. In the event the Judiciary Committee will then be the architect of communications policy, our tax policy, our transportation policy, and so forth. A result, I believe we all agree, is neither envisioned by the Senate rules, nor by conventional wisdom which holds that the committee with the expertise and experience regarding a particular subject is the appropriate forum in which to consider it. ●

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Madam President, if the other side is willing to yield back their time, I am willing to yield back my time.

Mr. PACKWOOD. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion of the Senator from South Carolina (Mr. THURMOND) to refer S. 271 to the Committee on the Judiciary for not to exceed 7 calendar days. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

(Mr. CHAFEE assumed the chair.)

Mr. HEFLIN (when his name was called). Present.

Mr. BAKER. Mr. President, on this vote I have a pair with the distinguished Senator from Maryland (Mr. MATHIAS). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. STEVENS. Mr. President, on this vote I have a live pair with the Senator from North Carolina (Mr. EAST). If he were present and voting, he would vote "yea." I voted "nay." Therefore, I withdraw my vote.

I announce that the Senator from Maine (Mr. COHEN), the Senator from North Carolina (Mr. EAST), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. PRESSLER), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from Connecticut (Mr. DOB), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

The PRESIDING OFFICER. Is there any other Senator in the Chamber who wishes to vote?

The result was announced—yeas 28, nays 59, as follows:

(Rollcall Vote No. 136 Leg.)

#### YEAS—28

Abdnor	Grassley	Simpson
Armstrong	Hatch	Specter
Baucus	Helms	Stafford
Biden	Laxalt	Stennis
Boren	Leahy	Symms
Chiles	Melcher	Thurmond
D'Amato	Metzenbaum	Tsongas
DeConcini	Nickles	Zoritsky
Denton	Percy	
Dole	Proxmire	

#### NAYS—59

Andrews	Glenn	Mattingly
Bentsen	Goldwater	McClure
Boschwitz	Gorton	Mitchell
Bumpers	Hart	Moynihan
Burdick	Hatfield	Murkowski
Byrd	Hawkins	Nunn
Harry F., Jr.	Hayakawa	Packwood
Byrd, Robert C.	Heinz	Pell
Cannon	Huddleston	Pryor
Chafee	Humphrey	Quayle
Cochran	Inouye	Randolph
Cranston	Jackson	Riegle
Danforth	Jeppson	Roth
Dixon	Johnston	Rudman
Domenici	Kassebaum	Sarbanes
Durenberger	Kasten	Sasser
Eagleton	Levin	Schmitt
Exon	Long	Warner
Ford	Lugar	Weicker
Garn	Matsunaga	Williams

ANSWERED "PRESENT"—1

Hefflin

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Baker, against.  
Stevens, against.

#### NOT VOTING—10

Bradley	Hollings	Tower
Cohen	Kennedy	Wallop
Dodd	Mathias	
East	Pressler	

The PRESIDING OFFICER. On this motion, the yeas are 28, the nays are 59, one Senator voting present. The motion to refer is not agreed to.

Under the previous order, the bill, S. 271, is returned to the calendar.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, on this motion I voted "present." I would like to explain the reason why I voted "present."

I am a member of the Commerce Committee and I am also a member of the Judiciary Committee. I am in a unique position of being the only member of both committees.

In the interest of internal harmony in the Commerce Committee and in the interest of internal harmony in the Judiciary Committee, I voted "present." Either way it would have gone I would have had a bite on the apple of antitrust.

[Laughter.]

Mr. STEVENS. Mr. President, there will be no more votes tonight.

#### INTERNATIONAL TRAVEL ACT AUTHORIZATION

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 91, S. 1105.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1105) to amend the International Travel Act of 1961 to authorize appropriations for fiscal year 1982, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation with amendments as follows:

On page 2, line 16, strike "the offices" and insert "any office";

On page 2, line 19, strike "offices" and insert "office";

So as to make the bill read:

S. 1105

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 6 of the International Travel Act of 1961 (22 U.S.C. 2126) is amended by striking out "and" immediately before "(b)", and by inserting immediately before the period at the end thereof the following: "; and (9) \$8,600,000 for the fiscal year ending September 30, 1982".

Sec. 2. The first sentence of section 4 of the International Travel Act of 1961 (22 U.S.C. 2124) is amended by striking "who shall report directly to the Secretary." and substituting "who shall report directly to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not report to, or be subject to general supervision by, any other officer of the Department of Commerce."

Sec. 3. The International Travel Act of 1961 is further amended by adding at the end thereof the following new section:

"Sec. 10. (a) Notwithstanding any other provision of law, the Secretary may not reduce the number of employees of the United States Travel Service in any office of such Service in foreign countries to a number that is less than the number of authorized employees assigned to such office in fiscal year 1979.

"(b) Notwithstanding any other provision of law, the Secretary may not reduce the amount of funds obligated in any fiscal year to pay for the activities of the offices of the United States Travel Service in foreign countries to an amount that is less than the amount of funds that were obligated to pay for the activities of such offices in fiscal year 1980."

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AUTHORIZATION OF APPROPRIATIONS FOR THE INTERNATIONAL INVESTMENT SURVEY ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 94, S. 1104.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1104) to amend the International Investment Survey Act of 1976 to provide an authorization for further appropriations, to avoid unnecessary duplication of certain surveys, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment as follows:

On page 2, line 5, strike "the".

So as to make the bill read:

S. 1104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(b) of the International Investment Survey Act of 1976 (22 U.S.C. 3103(b)) is amended by striking all of such section before the words "among other things and to the extent he determines necessary and feasible—" and substituting the following:

"(b) With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering calendar year 1980, a benchmark survey covering calendar year 1987, and benchmark sur-